

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. \_\_\_\_\_**

**IN RE:**

**SOUTH BAY AT MOUNT PLEASANT, LLC**

**PETITION WITH VERIFICATION  
 FOR EXCEPTION  
 TO REGULATION 103-327(A)**

**SUMMARY**

On behalf of South Bay at Mount Pleasant, LLC (“Petitioner”), the undersigned counsel respectfully requests that the Public Service Commission (“Commission”) issue an Order:

- (1) Excepting it from the individual metering requirement of S.C. Code Ann. Regulation 103-327(A), because the Petitioner is not constructing a “new multi-occupancy residential premises” subject to the Regulation; or
- (2) In the alternative, excepting it from the individual metering requirement of Regulation 103-327(A), because individual metering at Petitioner’s property is impractical and unreasonable.

**DISUCSSION**

In support of the relief requested, Petitioner presents this Petition With Verification by Craig Spivey, Construction Manager for Petitioner, showing as follows:

1. Petitioner owns and operates South Bay at Mount Pleasant, which is a Continuing Care Retirement Community (“South Bay CCRC”).
2. A CRCC is a residential alternative for adults that offers, under one contract, an independent living unit (an apartment or cottage), residential amenities and access to a continuum of long-term care services, as residents’ health and social needs change over

time.<sup>1</sup> As defined by statute, a CRCC is “a community in which there is furnished, pursuant to a continuing care contract, ... board or lodging together with nursing, medical, or other health-related services, regardless of whether the services or lodging are provided at the same location or not.” *See* State Continuing Care Retirement Community Act, S.C. Code Ann. § 37-11-10, *et seq.*

3. South Bay CRCC opened in 2018, and since that time has offered independent living units as well as assisted living units and skilled nursing/memory care living units.
4. South Bay CRCC is located within the Dominion Energy service area and receives electric service from Dominion as a single metered commercial customer of Dominion.
5. The existing structures on the South Bay CRCC campus include a common area facility that houses a dining room, library, pub, art studio, aquatics center, and a spa. Two wings extend from the common area. The independent living wing includes 13 living units and the healthcare wing includes 120 living units.
6. The plan for South Bay CRCC has always included living units referred to as “garden flats.” The garden flat living units were included in the original master plan. They will be located within a centralized location just across a lawn from the main building.
7. The garden flats constitute an important part of the overall South Bay CRCC design. There will eventually be 9 buildings including a total of 54 garden flat units. Garden flat living units are classified as independent living units, like the 143 independent units currently available for rental at South Bay CRCC. However, because of their size and

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<sup>1</sup> *See* State Continuing Care Retirement Community Act, S.C. Code Ann. § 37-11-10, *et seq.* (defining community in which there is furnished, pursuant to a continuing care contract, ... board or lodging together with nursing, medical, or other health-related services, regardless of whether the services or lodging are provided at the same location or not).

- design, the garden flat living units allow for occupancy by residents that are more ambulatory and independent.
8. In May of this year, South Bay CRCC broke ground and began constructing the first 18 garden flats, which should be completed by July 2021.
  9. Although we are early in the construction process, final decisions must be made very soon regarding electrical design. For that reason, South Bay CRCC is seeking an expedited hearing on this Petition.
  10. All living units at South Bay CRCC (independent living units as well as assisted living units and skilled nursing/memory care living units) are leased for a flat monthly bundled rental payment that includes power, water, sewer, cable, wi-fi, and all maintenance. Meals, housekeeping, access to wellness programming, and use of all common areas throughout the property are also included in every living units' monthly rent.
  11. When completed, the garden flat living units will be added to South Bay CRCC's inventory and made available for monthly rental under the same terms as all current South Bay CRCC living units are rented.
  12. In addition to high end finishes and modern design features, all buildings on the South Bay CRCC campus are equipped with full capacity generators. If electricity services are interrupted, these generators will activate to provide power to South Bay CRCC's buildings.
  13. The 18 garden flat living units under construction will share a common generator. Future garden flat living units are similarly designed to share emergency generators.

14. Providing these safety, convenience, and gracious living amenities via a bundled rental agreements is perhaps one of the most important elements of South Bay CRCC's business model, because it allows South Bay CRCC's elderly residents ease of a single payment for multiple services and removes the potential for forgotten bills, missed payments, late notices, and service interruptions.
15. The bundled rent also provides residents with flexibility to more easily move to units with higher level of care, if necessary. These transitions are made possible by, among other things, the fact that there are not multiple utility and security accounts to be opened and closed when a person requires movement to a living unit with an increased level of care.
16. South Bay CRCC has already complied with all local and state design, permitting, and planning approvals. The approved plans for the garden flat living units anticipate master metering consistent with the existing building.
17. Dominion has recently asserted that the garden flats under construction and in planning should be individually metered pursuant to S.C. Code Annotated Regulation 103-327(A), which states:
 

All services delivered to new multi-occupancy residential premises at which units of such premises are separately rented, leased or owned shall be delivered by an electrical utility on the basis of individual meter measurement for each dwelling.
18. The term "new multi-occupancy residential premises" is not defined by the Regulation or elsewhere in the South Carolina Code of Laws or Code of Regulations.
19. South Bay CRCC, however, is classified as a Continuing Care Retirement Community, which is specifically defined by the State Continuing Care Retirement Community Act, S.C. Code Ann. § 37-11-10, *et seq.*, as

... a community in which there is furnished, pursuant to a continuing care contract, to two or more persons not related to the administrator or owner of the facility within the third degree of consanguinity, board or lodging together with nursing, medical, or other health-related services, regardless of whether the services or lodging are provided at the same location or not. It does not include an institution operating solely as a nursing home or community residential care facility licensed by the South Carolina Department of Health and Environmental Control.

S.C. Code Ann. § 37-11-10(2).

20. South Bay CRCC is a Continuing Care Retirement Community that offers “living units” for rent to its “residents.”
21. As a CRCC, the “living units” South Bay CRCC rents are defined as “a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.” S.C. Code Ann. § 37-11-10(2).
22. The term “residents” is likewise defined by the State Continuing Care Retirement Community Act and “means a purchaser of, a nominee of, or a subscriber to a continuing care contract. It includes a person for whom an entrance fee has been paid.” S.C. Code Ann. § 37-11-10(9).
23. As a CRCC, South Bay CRCC is not “a multi-occupancy residential premises,” as that term is used in S.C. Regulation 103-327(A). In fact, S.C. Code Ann. § 37-11-10 provides other specific definitions for South Bay CRCC, its living units, and its residents; none of these definitions include or reference “multi-occupancy residential premises,” as that term is used by S.C. Regulation 103-327(A).
24. Therefore, contrary to Dominion’s assertion, S.C. Regulation 103-327(A) does not apply to South Bay CRCC.
25. Petitioner further asserts that even if this Commission finds the planned garden flat living units at South Bay CRCC are properly regulated as “multi-occupancy residential

- premises” subject to S.C. Code Ann. Reg. § 103-327(A), Petitioner is entitled to, and ask this Commission to authorize, an exception pursuant to S.C. Code Ann. Reg. § 103-327(B).
26. S.C. Code Ann. Reg. § 103-327(B) provides:
 

Any exception to the provisions of paragraph A., *supra*, must be approved by the commission upon its determination that individual metering to such premises is impractical and unreasonable.
  27. Subjecting South Bay CRCC to regulation as a “new multi-occupancy residential premises” pursuant to S.C. Code Ann. Regulation 103-327(A), would require South Bay CRCC to redesign its plans for garden units to have individual meters would result in delays and cost increases while it seeks various approvals from, among others the City of Mount Pleasant Design Review Board.
  28. Modification and redesign of the garden flat living units to be individually metered would also be very expensive and could impact the currently planned rental prices which are established so that they will be consistent with rates currently in place for the other living units at South Bay CRCC.
  29. Requiring each living unit to have its own meter would also require individual automatic transfer switches and changes in electrical design necessary to support an automatic transfer switch for every garden flat living unit. This redesign process and the cost associated would be prohibitively expensive and cause Petitioner to suffer additional engineering costs, as well as costs associated with additional governmental approvals. Petitioner estimates the total additional costs would be approximately \$175,000.

30. Therefore, Petitioner wishes to continue constructing the garden flats already under construction and its future garden flats as designed, including the planned generators, and seeks to include the units within the current master meter measuring consumption by the South Bay CRCC property as a whole.
31. With regard to metering, there is no functional difference between the garden flat living units and the other onsite living units. All future garden flat and any other future living units at South Bay CRCC will be operated as the current living units already on site.
32. Like the current living units already on site, future garden flat living units will be leased for a flat monthly rental payment that includes power, water, sewer, cable, wi-fi, and maintenance. Meals, housekeeping, access to wellness programming, and use of all common areas throughout the property are also included in every units' monthly rent. There is no functional difference between the garden flat living units and the current living units. Requiring South Bay CRCC to meter these units differently is not justified and is therefore impractical and unreasonable.
33. Because they function like the existing living units serviced by the existing Dominion meter, there is no functional reason to require redesign of the garden flat living units under construction or in planning.
34. Because the entire plan for South Bay CRCC is based on all units paying a bundled monthly rental fee, individually metering 54 garden flat living units would require South Bay CRCC to establish at least 54 accounts in its corporate name. Managing that many separate utility accounts for all the garden flat living units would be impractical, unreasonable, and would generate additional unnecessary work for the staff at South Bay CRCC.

35. If, for some reason, the individual accounts for the garden flat living units were required to be established in the name of the resident of each garden flat, that would likely create even more work for staff to pay all the monthly bills. If the residents were required to pay the bills themselves, it would create an impractical and unreasonable distinction between our residents as well as the opportunity for service interruption if a resident did not pay her bill. Many residents choose South Bay CRCC because they are not able to effectively manage the payment of multiple bills; hence, they are moving to South Bay CRCC to avoid the task of managing utility accounts and making payments.
36. The garden flat living units already underway and those planned are designed for a single-meter concept of energy monitoring. As previously stated herein, changing from the current master meter design would require the installation of submeters at each living unit. Each garden flat living unit, then, would also require its own transfer switch. These switches, in turn, would need to be maintained and serviced by South Bay. Those changes, associated costs estimated at \$175,000, and potential delays in construction demonstrate that individual metering is impractical and unreasonable.
37. Individual electric metering is also impractical and unreasonable for South Bay CRCC because it would interfere with the essential goal of providing ease of transition between living units of varying care levels.
38. Petitioner is not aware of any analysis in the CRCC field that supports a conclusion that bundled services encourage CRCC residents to waste power or to be less energy conscious. Adding the garden flat living units to the current meter will not encourage any of South Bay CRCC's residents to disregard responsible use of the electric utilities provided in their monthly rent.



39. Petitioner understands that in other similar situations Dominion has raised concerns about a facility reselling power to its residents and therefore functioning as a utility. South Bay CRCC is not set up to be and has no desire or plan to ever resell electricity. Petitioner does not intend to function as or to become a utility regulated by this Commission. South Bay CRCC has no plans to submeter any of the garden flat living units. To do so would require the same type of expenditures South Bay CRCC seeks to avoid through this Petition. Furthermore, as previously stated, individual metering would be unreasonable and impractical.

### **CONCLUSION AND PRAYER FOR RELIEF**

For the reasons herein set forth, South Bay CRCC should not be regulated as a “new multi-occupancy residential premises” pursuant to S.C. Code Ann. Regulation 103-327(A). Alternatively, even if the Regulation applies, requiring South Bay CRCC to comply with Regulation 103-327(A) for its 54 garden flat living units would be impractical, unreasonable, economically unfeasible, and present an added difficulty for residents; as such, an exception pursuant to Regulation 103-327(B) is appropriate.

WHEREFORE, Petitioner respectfully requests that the Public Service Commission issue an Order:

- (1) Excepting it from the individual metering requirement of S.C. Code Ann. Regulation 103-327(A), because the Petitioner is not constructing a “new multi-occupancy residential premises” subject to the Regulation; or
- (2) In the alternative, excepting it from the individual metering requirement of Regulation 103-327(A), because individual metering at Petitioner’s property is impractical and unreasonable.

Respectfully submitted,

/s/ Thomas P. Gressette, Jr.

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**ATTORNEYS FOR PETITIONER**

**SOUTH BAY AT MOUNT PLEASANT, LLC**

June 15, 2020  
Charleston, SC